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9 Attorneys for Secured Creditor WELLS FARGO BANK, NATIONAL ASSOCIATION AS  
10 TRUSTEE FOR THE CERTIFICATEHOLDERS OF STRUCTURED ASSET  
MORTGAGE INVESTMENTS II INC., BEAR STEARNS MORTGAGE  
11 FUNDING TRUST 2006-AR-3, MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-AR3

12 UNITED STATES BANKRUPTCY COURT  
13 DISTRICT OF NEVADA

14 In re  
15 RONALD EDO MANFREDINI ,  
16 Debtor(s).

Bankruptcy Case No. BK-S-09-22869-mkn  
Chapter 7

17 WELLS FARGO BANK, NATIONAL  
ASSOCIATION AS TRUSTEE FOR THE  
18 CERTIFICATEHOLDERS OF  
STRUCTURED ASSET MORTGAGE  
INVESTMENTS II INC., BEAR STEARNS  
19 MORTGAGE FUNDING TRUST 2006-AR-  
3, MORTGAGE PASS-THROUGH  
20 CERTIFICATES, SERIES 2006-AR3'S  
MOTION FOR RELIEF FROM  
21 AUTOMATIC STAY  
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

22 Date: September 9, 2009  
23 Time: 1:30 P.M.

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Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR-3, Mortgage Pass-Through Certificates, Series 2006-AR3 ("Movant"), moves this court for an order terminating the automatic stay of 11 United States Code § 362 as to Movant, so that Movant may commence and continue all acts necessary to enforce its security interest in real property generally described as 9215 Horseshoe Basin Ave, Las Vegas, Nevada 89149.

On or about July 20, 2009, Ronald Edo Manfredini ("Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and James F. Lisowski, Sr. was appointed as Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against Debtor and the bankruptcy estate are stayed as provided in 11 United States Code § 362.

Movant moves this court for relief from stay under 11 United States Code §§ 362(d)(1) and 362(d)(2).

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I.**

#### **MOVANT IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY UNDER 11 UNITED STATES CODE § 362(d)(2).**

#### **NO EQUITY**

11 United States Code § 362(d)(2) provides that relief from the automatic stay shall be granted if the debtor does not have any equity in the property and the property is not necessary to the debtor's effective reorganization.

In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that: § 362(d)(2) reflects congressional intent to allow creditors to immediately proceed against the property where the debtor has no equity and it is unnecessary to the reorganization, even where the debtor can provide adequate protection under § 362(d)(1). (Emphasis added).

Id. at 610 (emphasis added).

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1 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated  
2 that in determining whether equity exists in the property for purposes of § 362(d)(2), all  
3 encumbrances are totalled, whether or not all the lienholders have joined in the request for relief  
4 from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th  
5 Cir. 1984).

6 An appropriate cost of sale factor should also be added to determine if the debtor has any  
7 equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289  
8 (Bankr. S.D. Cal. 1982).

9 On or about August 25, 2006, Debtor and Brenda Jondahl (collectively, the "Borrowers"), for  
10 valuable consideration, made, executed and delivered to Bear Stearns Residential Mortgage  
11 Corporation ("Lender") a Note in the principal sum of \$234,400.00 (the "Note"). Pursuant to the  
12 Note, Borrowers are obligated to make monthly principal and interest payments commencing  
13 October 1, 2006, and continuing until September 1, 2046, when all outstanding amounts are due and  
14 payable. The Note provides that, in the event of default, the holder of the Note has the option of  
15 declaring all unpaid sums immediately due and payable. A true and correct copy of the Note is  
16 attached hereto as exhibit B and incorporated herein by reference.

17 On or about August 25, 2006, the Borrowers made, executed and delivered to Lender a Deed  
18 of Trust (the "Deed of Trust") granting Lender a security interest in real property commonly  
19 described as 9215 Horseshoe Basin Ave, Las Vegas, Nevada 89149 (the "Real Property"), which is  
20 more fully described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs  
21 incurred as a result of the Debtor's bankruptcy case may be included in the outstanding balance  
22 under the Note. The Deed of Trust was recorded on August 31, 2006, in the Official Records of  
23 Clark County, State of Nevada. A true and correct copy of the Deed of Trust is attached hereto as  
24 exhibit C and incorporated herein by reference.

25 Subsequently, Lender's beneficial interest in the Note and the Deed of Trust was sold,  
26 assigned and transferred to Movant. A true and correct copy of the Corporation Assignment of Deed  
27 of Trust evidencing the Assignment of the Note and Deed of Trust to Movant is attached hereto as  
28 exhibit D and incorporated herein by reference.

The obligation under the Note is in default as of March 1, 2009, for failure to make payments to Movant. As of July 23, 2009, the total obligation due and owing under the Note is in the approximate amount of \$268,416.81, representing the principal balance of \$261,499.00, interest in the sum of \$6,434.20, late charges in the amount of \$137.00, escrow advances in the amount of \$225.61, and recoverable balance in the amount of \$121.00. This is an approximate amount for purposes of this Motion only, and should not be relied upon as such to pay off the subject loan as interest and additional advances may come due subsequent to the filing of the Motion. An exact payoff amount can be obtained by contacting Movant's counsel. Further, Movant has incurred additional post-petition attorneys' fees and costs in bringing the instant Motion. Moreover, the total arrears under the Note are in the approximate sum of \$5,871.41, excluding the post-petition attorneys' fees and costs incurred in filing the instant Motion. Movant's Information Sheet as to the extent of liens and encumbrances against the Real Property is attached hereto as exhibit A and incorporated herein by reference.

## II.

### RELIEF FROM STAY

### LACK OF EQUITY

Movant is informed and believes that, based on the Debtor's bankruptcy Schedules and Statements, the fair market value of the Property is approximately \$142,461.00. True and correct copies of the Debtor's bankruptcy Schedules "A" and "D" are collectively attached hereto as exhibit E and incorporated herein by reference.

Based on the above, Movant maintains that the equity in the Property is as follows:

Fair Market Value:	\$142,461.00
Less:	
Movant's Trust Deed	\$268,416.81
EMC Mortgage's Trust Deed	\$57,977.00
Town Center Village's HOA	\$145.00
Costs of Sale (8%)	<u>\$11,396.88</u>
Equity in the Property:	\$<195,474.69>

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As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to relief from the automatic stay pursuant to 11 United States Code § 362(d)(2).

Debtor's Statement of Intent indicates it is the intent of the Debtor to surrender the Real Property in full satisfaction of Movant's secured claim. A true and correct copy of the Debtor's Statement of Intent is attached hereto as exhibit F and incorporated herein by reference.

### III.

#### **MOVANT IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY UNDER 11 UNITED STATES CODE § 362(d)(1).**

#### **CAUSE - LACK OF ADEQUATE PROTECTION**

Pursuant to the provisions of 11 United States Code §§ 361 and 362(d)(1), Movant is entitled to adequate protection of its interest in the Property.

Movant submits that adequate protection in this case requires normal and periodic cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

Movant is informed and believes that Debtor is presently unwilling or unable to provide adequate protection to the Movant and there is no probability that adequate protection can be afforded to Movant within a reasonable time.

By reason of the foregoing, Movant is entitled to relief from stay under 11 United States Code § 362(d)(1), based upon the failure of Debtor to provide adequate protection to Movant.

WHEREFORE, Movant respectfully prays for an Order of this court as follows:

1. Terminating the automatic stay of 11 United States Code § 362, as it applies to the enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of Trust;
2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;
3. Granting Movant leave to foreclose on the Real Property and to enforce the security interest under the Note and the Deed of Trust, including any action necessary to obtain possession of the Property;

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1           4.       Permitting Movant to offer and provide Debtor with information re: a potential  
2 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss  
3 Mitigation Agreement, and to enter into such agreement with Debtor;

4           5.       Alternatively, in the event this court declines to grant Movant the relief requested  
5 above, Movant requests that an Order for adequate protection be issued, requiring the Debtor to  
6 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust  
7 and all other deeds of trust encumbering the Real Property, including Debtor's obligations to pay  
8 when due (a) the monthly installments of principal and interest, as required under the Note;  
9 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtor in order to  
10 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the  
11 filing of this motion;

12           6.       That the attorneys' fees and costs incurred by Movant for filing the instant Motion be  
13 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;

14           7.       That the requirements of Local Rule 9021 be waived; and

15           8.       For such other and further relief as the court deems just and proper.

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17 Dated: August 20, 2009

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SERIES 2006-AR3